

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN DAVID RENAUD,

Defendant-Appellant.

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UNPUBLISHED

October 31, 2006

No. 263593

Macomb Circuit Court

LC No. 04-004368-FH

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

A jury convicted defendant of unarmed robbery and the trial court sentenced defendant to 3 to 15 years' imprisonment. Defendant appeals, and we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts, incorrectly, that he was denied a fair trial because of prosecutorial misconduct. We review unpreserved claims of prosecutorial misconduct for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Reversal is warranted only when a plain error resulted in a conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.* at 774. Prosecutorial misconduct claims are decided case by case, and the prosecutor's remarks are evaluated in context. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

Defendant says that he was denied a fair trial because the prosecutor misstated the law by telling the jury that it could not convict defendant of the lesser offense of assault. However, reading the prosecutor's statement in context, and taken as a whole, it would have been apparent to the jury that it could find defendant guilty of the lesser offense. For instance, the prosecutor stated, "I'm going to ask you not to consider [the lesser offense of assault]." Even more importantly, the trial court instructed the jury, "You may also consider whether the defendant is guilty of the lesser crime of assault . . . ." Misstatements of law can be corrected by proper instructions from the trial court. *People v Grayer*, 252 Mich App 349, 357; 651 NW2d 818 (2002). Here, the trial court's instructions regarding the correct law negated any prejudicial effects that may have resulted and, therefore, the defendant's substantial rights were not affected.

Defendant also argues that the prosecutor improperly injected into his closing argument his personal belief of defendant's guilt, and made an improper appeal to the jury's civic duty.

Reading the prosecutor's statements in context and, taken as a whole, defendant was not prejudiced. The prosecutor did not improperly inject his personal belief into the argument because he related his beliefs to the evidence. See *People v Bahoda*, 448 Mich 261, 286-287; 531 NW2d 659 (1995). Also, the prosecutor did not improperly appeal to the juror's civic duty because he did not broaden the jury's deliberation beyond defendant's guilt or innocence. *Id.* at 284. Rather, the prosecutor merely asked the jury to do their civic duty and convict defendant. Furthermore, the trial court properly instructed the jury that it was to determine the credibility of witnesses, and that the prosecutor's statements were not evidence, thus curing any potential prejudicial effect of the prosecutor's comments.

Defendant also says that there is insufficient evidence to support his conviction of unarmed robbery. We disagree. This Court reviews claims of insufficient evidence de novo, and we view the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

The elements of unarmed robbery are "(1) a felonious taking of property from another, (2) by force or violence or assault or putting in fear, and (3) being unarmed." *People v Johnson*, 206 Mich App 122, 125-126; 520 NW2d 672 (1994); see MCL 750.530. Defendant argues that the prosecution failed to show larcenous intent beyond a reasonable doubt. The only evidence of lack of intent defendant points to is the victim's negative answer to the question of whether defendant would have reason to know of the money in the victim's pocket. However, on redirect examination the victim testified that he had not personally told defendant he had money in his pocket, but that the codefendant may have told defendant. The jury may have properly chosen to believe the testimony of the victim over that of defendant. *Carines*, *supra* at 757-758. Defendant also challenges the sufficiency of the evidence regarding his presence at the scene of the crime by pointing to testimony given by himself and codefendant. However, the victim testified that defendant was at the scene of the crime, and in fact participated in the crime. Again, it is the province of the jury to determine the credibility of witnesses. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). Therefore, reviewing the evidence in the light most favorable to the prosecution, there is sufficient evidence to convict defendant of unarmed robbery.

Affirmed.

/s/ William C. Whitbeck  
/s/ Henry William Saad  
/s/ Bill Schuette